

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

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Date:

September 11, 2007

Legend

X =

Y =

A =

B =

C =

D =

State =

Country =

Date1 =

Date2 =

Date3 =

Year1 =

Year2 =

Year3 =

Dear _____ :

This responds to a letter dated May 1, 2007, submitted on behalf of X by its authorized representative, requesting relief pursuant to § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on Date1, and elected to be treated as an S corporation effective Date1. A, B, C, and D were the shareholders of X during the relevant times for this ruling. A is a citizen of Country who lived primarily in the United States and was a resident alien for federal income tax purposes at the time of X's incorporation and thereafter. The other shareholders of X are United States citizens residing in State.

In Year2, X received a Form W-9 signed by A certifying that A was a U.S. Person for federal tax purposes for the entire Year1 calendar year. At approximately the same time, A informed X that A would be spending more time in Country due to the poor health of a family member, and that A anticipated spending most of the time in Country in the future. A further informed X that A would most likely fail to meet the residency requirements as a resident alien under § 7701(b)(1)(A) in Year3, for purposes of § 1361(b)(1)(C).

X and its shareholders were concerned that X's status as an S corporation for Year2 may be endangered due to A's potential status as a nonresident alien for Year2. At approximately this same time, B and C had informed X that they were interested in selling or redeeming their X stock and their ownership interests in Y, a limited liability company under the laws of State that was owned by the shareholders of X in the same proportions in which they held stock in X. Accordingly, on or about Date3, A, B, C, and D entered into an agreement whereby B and C transferred their interests in Y to A in exchange for A's stock in X. Thereafter, X sold or distributed its assets to B, C, and D in complete liquidation.

X represents that the circumstances resulting in the potential termination of X's S corporation election beginning Date2 were inadvertent and not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) provides that the term "small business corporation" means a domestic corporation that is not an ineligible corporation and that, among other requirements, does not have a nonresident alien as a shareholder.

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of §1362, to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) will be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation. Section 1362(d)(2)(B) provides that the termination shall be effective on and after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consent, or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

Section 1.1362-4(d) provides that the Commissioner may require any adjustments that are appropriate. In general, the adjustments required should be consistent with the treatment of the corporation as an S corporation during the period specified by the Commissioner. In the case of a transfer of stock to an ineligible shareholder that causes an inadvertent termination under § 1362(f), the Commissioner may require the ineligible shareholder to be treated as a shareholder of an S corporation during the period the ineligible shareholder actually held stock in the corporation. Moreover, the Commissioner may require protective adjustments that prevent any loss of revenue due to a transfer of stock to an ineligible shareholder (e.g., transfer to a nonresident alien).

Based solely upon the information submitted and the representations made, we conclude that X's S corporation election may have terminated in Year2 because X may have had an ineligible shareholder in Year2. However, we conclude that if X's S corporation election was terminated, such termination was inadvertent within the meaning of § 1362(f). Consequently, we rule that X will be treated as continuing to be an S corporation from Date2, and thereafter, provided that X's S corporation election was not otherwise terminated under § 1362(d).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed regarding whether X otherwise qualifies as a small business corporation under § 1361, or whether A in fact was a nonresident alien in Year2 or thereafter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Melissa C. Liquerman
Senior Technician Reviewer, Branch 2
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes